

IMPLEMENTATION OF THE UNIFORMED SERVICES FORMER  
SPOUSES' PROTECTION ACT(U) GENERAL ACCOUNTING OFFICE  
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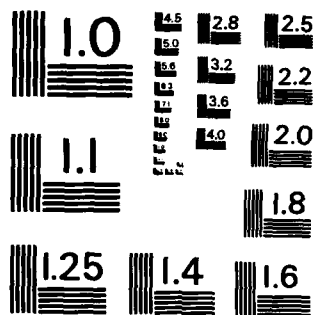
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Figure 1

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BY THE U.S. GENERAL ACCOUNTING OFFICE

**Report To The Chairman, Subcommittee On  
Military Personnel And Compensation, Committee  
On Armed Services, House Of Representatives**

**Implementation Of The Uniformed Services  
Former Spouses' Protection Act**

Responding to a Supreme Court decision that military retired pay could not be divided as marital community property in divorce cases, the Congress authorized the services to pay part of a member's retired pay to a former spouse in compliance with a state court order.

The services generally have done a good job implementing the act, but its complexity has caused problems. These problems concern interpretations of the act and court orders, and procedures for handling applications. Consequently, retirees and former spouses have sometimes been treated differently, depending upon the service involved. Some inconsistencies have been corrected but others remain.

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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND  
INTERNATIONAL AFFAIRS DIVISION

B-214076

The Honorable Les Aspin  
Chairman, Subcommittee on Military  
Personnel and Compensation  
Committee on Armed Services  
House of Representatives

Dear Mr. Chairman:

In response to your April 19, 1983, request, this report summarizes the results of our evaluation of how the Department of Defense and the military services are implementing the Uniformed Services Former Spouses' Protection Act (Public Law 97-252, Title X).

As arranged with your office, we are sending copies of this report to the Chairman, Subcommittee on Manpower and Personnel, Senate Committee on Armed Services; to the Secretaries of Defense and of the Army, Navy, and Air Force; to the Commandant of the Marine Corps; and to other interested parties.

Sincerely yours,

*Frank C. Conahan*  
Frank C. Conahan  
Director

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GENERAL ACCOUNTING OFFICE  
REPORT TO THE SUBCOMMITTEE  
ON MILITARY PERSONNEL AND  
COMPENSATION, COMMITTEE ON  
ARMED SERVICES, HOUSE OF  
REPRESENTATIVES

IMPLEMENTATION OF THE  
UNIFORMED SERVICES FORMER  
SPOUSES' PROTECTION ACT

D I G E S T

In September 1982, the Congress enacted the Uniformed Services Former Spouses' Protection Act in response to the Supreme Court's McCarty v. McCarty decision. The Supreme Court decision held that, in the absence of specific federal authority, state courts could not treat military retired pay as marital community property. The act authorized

- the services to pay a portion of a military member's retired pay directly to his<sup>1</sup> former spouse in compliance with a court order,
- the retired member to designate a former spouse as a beneficiary of his Survivor Benefit Plan, and
- certain former spouses to receive medical, commissary, and military exchange benefits.

The Congress also encouraged service secretaries to allow "deserving former spouses" otherwise ineligible for medical benefits to use military medical facilities. (See pp. 1 and 2.)

To help clarify questions about the act, the Chairman, Subcommittee on Military Personnel and Compensation, House Committee on Armed Services, asked GAO to evaluate the implementation process and to pinpoint problems that require administrative or legislative correction.

GAO found that the Department of Defense has taken various measures to help ensure fair and consistent implementation of the direct pay-

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<sup>1</sup>Although the member and former spouse can be of either "gender," the act and this report refer to the military member as "he" and to the former spouse as "she."

ment provisions of the act, and that the services generally have done a good job of implementing them. But, as could be expected with complex new legislation such as this, they have encountered some problems.

GAO also found that the act's tax withholding provisions affect the amounts of retirement pay received by members and former spouses. This problem may warrant congressional attention.

Finally, GAO found that the services rejected most applications for medical, commissary, and exchange benefits because of the act's strict eligibility requirements. It also found that service procedures for authorizing these benefits vary.

#### DIRECT PAYMENT PROVISIONS

The act requires the military services to make direct payments to the former spouse if the court order specifies that payments are to be made from military retired pay, and if a number of other criteria are met. GAO found that the services routinely approve most direct payment applications that clearly meet the criteria. However, they have not always been consistent in (1) their interpretations of the specific wording of the act or of court orders, and (2) their procedures for reviewing and approving applications. At the beginning of the act's implementation, there were more inconsistencies than there are now, but some remain. Following are examples of the ways in which the services still differ in their interpretations of the act or of court orders:

- The Navy and Marine Corps do not accept court orders that use a narrative formula to divide retired pay if the orders do not specify whether creditable or noncreditable service for retirement purposes is to be used in the formula. The Army and Air Force do accept such orders. They assume that the court intended that years of creditable service be used.
- The Marine Corps does not honor court orders that (1) state that the "proceeds" of

retired pay should be divided, unless it is clear from the order that payments are to be made monthly; (2) express the division as "an amount equal to" a percent of retired pay; or (3) instruct the member, himself, to pay the former spouse her portion of retired pay or appoint the member as the "trustee" for the former spouse's portion. The other three services do honor such court orders.

--The Army and Air Force will not accept court orders issued in states where the laws neither specifically authorize nor prohibit courts from dividing retired pay in divorce cases. However, the Navy and Marine Corps will accept court orders from states where the law is silent with regard to the court's authority to divide retired pay.

--In the case of court orders that became final before the date of the McCarty decision, the Navy disregards some but not all subsequent modifications. The other three services disregard all subsequent modifications, as the act requires. (See pp. 6 to 13.)

The services have also improved the consistency of their procedures for reviewing and approving applications. Nevertheless, inconsistencies such as the following remain:

--The Army and Marine Corps instructions for the direct payment application contain documentation requirements that are (1) inconsistent with the other services' documentation requirements, and (2) inconsistently followed within the services.

--The Navy is the only service that provides a complete explanation for its rejection of an application in its initial notification letter. The other services sometimes neglect to provide a list of all correctable deficiencies in this first letter, which makes additional correspondence necessary, and delays the making of payments. (See pp. 13 to 17.)

Since the services have been applying different interpretive criteria and using different

procedures for processing direct payment applications, former spouses and retired members are sometimes treated differently depending upon the service from which the member retired. GAO has no position on how these inconsistencies should be resolved, but GAO believes that members and former spouses should be treated the same under the act, irrespective of the service involved.

#### TAX WITHHOLDING IMPLICATIONS

The income tax withholding provisions of the act may be producing results that the Congress did not initially contemplate. This is because the act requires that retired pay be divided after taxes, which are withheld from only the member, and because the act allows changes in the member's tax status to affect the amount of retired pay the former spouse receives.

Dividing retired pay after taxes works to the disadvantage of the former spouse and to the advantage of the retired member. Because the Internal Revenue Service considers retired pay to be wages solely of the member, it requires that his tax withholding be based on gross retired pay rather than on the portion of retired pay specified in the court order. As a result, when the member files his annual tax return, the amount he paid to the former spouse as alimony or as a division of property will be deducted from his gross income, and he will receive a refund on the excess taxes withheld. In contrast, when the former spouse files her return, she must declare the amount of retired pay as income, and pay taxes on it since none would have been withheld and credited to her account. Consequently, even if a court order divides retired pay equally between the member and the former spouse, the member will receive more than 50 percent of net retired pay, and the former spouse less than 50 percent. (See pp. 19, 24, and 25.)

Changes in the member's tax status for reasons unrelated to a divorce or marital separation can also affect the amount of retired pay the former spouse receives. On the one hand, this amount will increase if the member takes on



additional dependents--as by remarriage. This increase is the result of a requirement that the member claim all dependents to which he is entitled. An additional dependent would decrease the member's tax obligation and increase net retired pay. This means that the former spouse will share with the member in the tax benefit and will receive an increased amount of retired pay. (See pp. 20 and 21.)

On the other hand, the amount the former spouse receives can decrease if the member has income in addition to his military pay which increases his effective tax rate. This decrease is the result of a provision of the act which says that the member can have additional amounts withheld for federal income tax purposes and subtracted from retired pay if he can present evidence of a tax obligation. Although a recent Comptroller General Decision (B-213895, April 25, 1984) held that a retiree may not subtract his entire tax obligation to compute net retired pay, he may still reduce the amount paid to his former spouse if his effective tax rate exceeds the tax rate applicable solely to retired pay. (See pp. 22 and 23.)

The question is whether the Congress contemplated that the member's tax status resulting from circumstances not related to a divorce or marital separation should increase or decrease the amount of retired pay the former spouse receives.

#### MEDICAL, COMMISSARY, AND EXCHANGE BENEFITS

The act gives former spouses medical benefits--if they are not covered by an employer-sponsored health plan--and commissary and exchange privileges. To obtain these benefits, eligible former spouses use a military ID card. The eligibility criteria are very specific:

- The divorce must have become final on or after February 1, 1983.
- The former spouse must not have remarried.
- The marriage must have lasted at least 20 years, during which time the member served at least 20 years of creditable service.

As a result of these strict criteria, most former spouse requests for ID cards were denied. (See pp. 26 and 27.)

GAO found several variations in procedures for issuing ID cards among the services:

- The Navy and Marine Corps have centralized the review and approval process, but the Army and Air Force processes are decentralized. A centralized process has caused some former spouses to wait longer to receive an ID card.
- The Navy requires certified marriage and divorce documents, whereas the other services accept uncertified documents. The Navy's procedure seems reasonable since the length and period of marriage and the divorce date are critical for eligibility.
- The Navy requires a notarized statement from the former spouse, saying that she is unmarried. This statement proves only that she signed it, not that the statement itself is true. The Army accepts an oral statement, which may not provide enough assurance of eligibility. The Air Force and Marine Corps require a signed--but not notarized--statement by the former spouse.
- All services, except the Army, obtain documentation to verify a member's period and length of service. The Army requires that the former spouse obtain this documentation. (See pp. 27 to 29.)

#### AGENCY COMMENTS AND GAO EVALUATION

GAO obtained official oral comments from Defense. Defense agreed with our observations and stated that, given the complexity of the act, it was pleased that GAO found relatively uniform implementation. Defense said that it believed the range of interpretation differences among the services to be small and confined to highly technical issues. GAO agrees that the range of differences has narrowed since the date of the act but believes that, because the issues are highly technical, continued Defense attention will be needed to ensure consistency.

Defense said that GAO had accurately described the tax withholding process and its effect, but declined to comment further since this is an issue for the Congress to consider.

Defense stated that, although the report contains no specific recommendations, it is taking a number of actions to improve consistency among the services with regard to interpretations of the act and court orders, direct payment review and approval procedures, and procedures for approving former spouse ID cards. (See pp. 17, 18, 25, and 31.)

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## ABBREVIATIONS

CHAMPUS	Civilian Health and Medical Program of the Uniformed Services
DEERS	Defense Eligibility Enrollment System
DOD	Department of Defense
GAO	General Accounting Office

## CHAPTER 1

### INTRODUCTION

In 1981, the United States Supreme Court held that, in the absence of specific authority granted by federal statute, state courts could not properly treat military retired pay as marital community property in divorce proceedings (*McCarty v. McCarty*, 453 U.S. 210). The Supreme Court noted, however, that in 1975 and 1977 the Congress had enacted statutes to authorize the garnishment of federal pay and benefits, including military retired pay, to enforce child support or alimony obligations, and that in 1978 and 1980 the Congress had authorized state courts to treat federal civil service and foreign service annuities as divisible community property. The Court observed that the Congress in the future might well decide, as it already had in the civil service and foreign service context, that more protection should be afforded the former spouse of a retired member of the military services, but that the Congress alone, not the Court, could so decide.

In 1982, the Congress responded by passing the Uniformed Services Former Spouses' Protection Act.<sup>1</sup> The act essentially did three things:

--It granted state courts the authority, under certain specified conditions, to treat military "disposable retired or retainer pay" either as property solely of the retired service member or as property of the member and his<sup>2</sup> spouse, in accordance with the particular state laws.

It also provided that, subject to prescribed limitations, the military services were to begin making payments directly to the former spouse of the portion of "disposable retired or retainer pay" specified in the court order for child support or alimony, or as a division of property. Payments are to begin within 90 days after the court order is effectively served on the military service.

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<sup>1</sup>Title X, Public Law 97-252, approved September 8, 1982, 96 Stat. 730. For a complete discussion of the legislative history, see Congressional Research Service, "Summary and Legal Analysis of the Uniformed Services Former Spouses' Protection Act," dated September 13, 1982.

<sup>2</sup>Although the member and former spouse can be of either gender, the act and this report refer to the military member as "he" and to the former spouse as "she."

- It authorized service members to designate a former spouse as beneficiary under the Survivor Benefit Plan program.
- It authorized unremarried former spouses who had been married for at least 20 years during which time the member had served 20 years of creditable service, and whose divorce had become effective on or after February 1, 1983, to receive (1) medical care in military facilities or through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) if the former spouse was without an employer-sponsored health plan, and (2) commissary and exchange privileges.

The Congress was concerned that, since medical care was prospective from the effective date of the act, some deserving former spouses whose divorces occurred before that date would not be eligible even though they might suffer from illnesses or diseases incurred while the members were on active duty. To deal with these possible situations, the conference report (House Report No. 97-749) that accompanied the act strongly encouraged the service secretaries to authorize the use of military medical facilities by "deserving former spouses," but the service secretaries were expected to limit this special designee status to cases where the marriage had lasted at least 20 years during which time the member had served in the military.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

As requested, our objectives were to compare and evaluate Department of Defense (DOD) and service regulations, policies, and procedures for implementing the act, pinpointing specific problem areas that need either administrative or legislative correction.

To accomplish our objectives related to the act's direct payment provisions, we obtained data and interviewed officials from the Office of the Assistant Secretary of Defense (Comptroller) and the Assistant Defense General Counsel (Fiscal Matters). Also, we interviewed service officials responsible for reviewing and approving direct payment applications, and we reviewed documents at the following locations:

- U.S. Army Finance and Accounting Center, Garnishment Branch, Legal Services, Fort Benjamin Harrison, Indiana.
- U.S. Navy Family Allowance Activity, Legal Branch, Cleveland, Ohio.
- U.S. Air Force Accounting and Finance Center, Garnishment and Litigation Division, Lowry Air Force Base, Colorado.

--U.S. Marine Corps Finance Center, Legal Staff, Kansas City, Missouri.

At each office, we determined the actual procedures applied and the types of decisions made by the services by selecting and analyzing two random samples of direct payment applications from former spouses, received before July 1, 1983. The applications in one sample had been approved; the applications in the other sample either had been rejected or were pending for more information as of June 30, 1983. Because we did not find enough applications with the same court order language in any service, we were unable to make adequate statistical projections of the services' decisions. But our examinations did provide information on service procedures for processing direct payment applications. We revisited each office during May 1984 to determine what changes in procedures had occurred since the act had been initially implemented.

We discussed the effect of the act's federal income tax withholding provisions with officials at the Internal Revenue Service in Washington, D.C.

We identified and evaluated DOD and service policies and procedures for issuing military ID cards for purposes of authorizing medical care and commissary and exchange privileges by obtaining data and interviewing officials of the following organizations:

--Office of the Assistant Secretary of Defense  
(Manpower, Installations, and Logistics),  
Washington, D.C.

--Office of the Adjutant General of the Army,  
Installation and Personnel Support Division,  
Alexandria, Virginia.

--Naval Military Personnel Command, Community and  
Personnel Services Division, Benefit Eligibility  
Branch, Arlington, Virginia.

--U.S. Air Force Manpower and Personnel Center, Personnel  
Information Policy Branch, Randolph Air Force Base, San  
Antonio, Texas.

--U.S. Marine Corps Headquarters, Human Resources  
Division, Personal Affairs Branch, Arlington, Virginia.

Since the Navy and Marine Corps had a centralized procedure for approving military ID cards for former spouses, we were able to evaluate the procedures used by these services by selecting and analyzing two random samples of applications--approved and unapproved--received on or before July 21, 1983. The sample



sizes were determined by that needed to interpret the results at the 90-percent confidence level. We performed this test at the Navy and Marine Corps locations listed above. We determined whether local Navy and Marine Corps ID-card offices were aware of and were using those prescribed centralized approval procedures by visiting and interviewing officials at the following organizations:

- The Naval District of Washington, Crystal City Branch Office, Personnel Support Detachment, Arlington, Virginia.

- The Centralized Identification Card Center, Marine Corps Base, Quantico, Virginia.

On the other hand, since the Army and Air Force used a decentralized approach to review and approve ID-card applications, we were not able to conduct an evaluation using a statistically valid sample. However, we determined the procedures these services used to review and approve the issuance of ID cards to former spouses by visiting and interviewing field officials of these services in the following Washington, D.C., area locations:

- U.S. Army Customer Service Welcome Center, Fort Myer, Arlington, Virginia.

- U.S. Air Force Customer Assistance Section, Consolidated Base Personnel Office, Andrews Air Force Base, Maryland.

We identified and evaluated the services' policies and procedures for granting secretary-designee status to former spouses by obtaining data and interviewing officials of the following organizations which prepare the recommendations for secretary-designee status:

- U.S. Army, Office of the Surgeon General, Professional Services Directorate, Patient Administration Division, Patient Affairs Branch.

- Naval Medical Command, Office of the Deputy Commander for Health Care Operations, Beneficiary Service Division, Patient Affairs and Services Branch.

- U.S. Air Force, Office of the Surgeon General, Health Affairs and Plans Division.

We did not evaluate the services' implementation of the act's Survivor Benefit Plan provisions because this section of the act was being amended during the period of our field work. The Survivor Benefit Plan provisions were amended by section 941, Public Law 98-94, on September 24, 1983.

We conducted our review from April 1983 through May 1984 in accordance with generally accepted government auditing standards. On August 9, 1984, DOD provided official oral comments on this report.

## CHAPTER 2

### IMPLEMENTATION OF DIRECT PAYMENT PROVISIONS

The act provides that, subject to certain limitations, when a marriage dissolves a court may treat disposable military retired or retainer pay<sup>1</sup> either as property solely of the military member or as property of the member and the spouse, in accordance with the law of the jurisdiction of the particular court. The military services are to make payments directly to the former spouse if the court order specifies that alimony, child support, or division-of-property payments are to be made from military retired pay.<sup>2</sup> If retired pay is treated as property,<sup>3</sup> the act requires the services to make direct payments to the former spouse only if (1) the court has personal jurisdiction over the military member for reasons other than his military assignment and (2) the former spouse has been married to the member at least 10 years, during which time the member performed at least 10 years of service creditable in determining eligibility for retired pay. Also, if the divorce was finalized before June 26, 1981, payments must be based on the court order's wording on that date, without regard to subsequent modifications.

The former spouse's payment may not exceed 50 percent of disposable retired pay; however, if the member's retired pay is subject to more than one court order, then the total of the payment may not exceed 65 percent of disposable retired pay.

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<sup>1</sup>Retainer pay is received by members of the Fleet Reserve and Fleet Marine Corps Reserve. These reserves were created (39 Stat. 559,593) to provide a pool of experienced personnel who could be recalled to active duty on short notice in time of war or emergency. While there are technical differences between being on these reserve lists and being on the retired list, and although the pay received by reserve members is known as "retainer" pay rather than "retired" pay, transfers to these reserves are, for all practical purposes, the same as retirements.

<sup>2</sup>Since many existing child support and alimony decrees provide simply for periodic payments of a certain amount of money without specifying that payments be made from retired pay, an amendment to 10 U.S.C. 1408 has been proposed (H.R. 5027) that would permit direct payments for child support and alimony even though the court order does not so specify.

<sup>3</sup>DOD interprets the act to mean that retired or retainer pay may be treated like property, not that it is property.

Disposable retired pay is defined as gross retired pay less amounts owed to the United States, income tax withholdings, government life insurance premiums, and Survivor Benefit Plan premiums where the former spouse is the beneficiary.

Legal staffs located at the Army, Air Force, and Marine Corps finance centers and at the Navy Family Allowance Activity are responsible for reviewing and approving former-spouse direct-payment applications.

At the time of our initial field work in August 1983, the services did not have accurate statistical data on the total number of former-spouse direct-payment applications received or rejected. However, we estimated the number of cases handled between February 1, 1983, and June 30, 1983, the time period covered by our test, to be as follows:

Former Spouse Applications for Direct Payment  
February 1 To June 30, 1983

<u>Service</u>	<u>Total</u>	<u>Approved</u>	<u>Percent</u>	<u>Unapproved<sup>a</sup></u>	<u>Percent</u>
Army	424 <sup>b</sup>	296	69.8	128	30.2
Navy	527	310	58.8	217	41.2
Air Force	545	350	64.2	195	35.8
Marine Corps	162	58	35.8	104	64.2
Total	<u>1,658</u>	<u>1,014</u>	61.2	<u>644</u>	38.8

<sup>a</sup>Unapproved applications include those rejected and those pending for more information.

<sup>b</sup>This number is based on (1) our actual count of unapproved cases and (2) the number of approved cases as reported by the Army. Army officials believe that the number of applications received as of June 30, 1983, was higher; however, they acknowledge that their method of computation involves some double counting.

As shown above, 644 direct payment applications remained unapproved as of June 30, 1983. From this group of unapproved applications, we randomly selected a sample of 210 cases to examine the reasons applications were not approved. We were unable to make statistical projections as a result of our test because of the wide variations in court order language. However, we found that the applications we examined had not been approved for the reasons shown in the following table:

Reasons Sampled Payment Cases Were Unapproved

<u>Reasons<sup>a</sup></u>	<u>Army</u>	<u>Navy</u>	<u>Air Force</u>	<u>Marine Corps</u>	<u>Total</u>
Court order did not require payments from retired pay	11	14	4	7	36
Court order not shown to be final	1	3	16	9	29
Court order did not award payment	5	11	5	4	25
Documents not served by certified mail	-	-	13	11	24
Member on disability retirement	5	8	3	7	23
Length of marriage and/or years-of-service criteria not met	5	9	3	5	22
Court order not certi- fied	-	2	7	9	18
No proof of marriage date	-	2	10	4	16
Amount cited as fraction or formula	2	-	-	9	11
No proof of court jurisdiction	4	-	5	1	10
No indication that Soldiers' and Sailors' Civil Relief Act require- ments met	2	2	5	1	10
Court order not submitted	1	4	2	2	9
Unable to compute payment	1	-	4	3	8
Court appointed member as trustee	-	-	-	8	8
State law did not allow division	3	-	3	-	6
Member not receiving retired pay	-	5	-	-	5
Division added after June 26, 1981	1	2	-	-	3
Division deleted after June 26, 1981	-	2	-	-	2
Member deceased	1	1	-	-	2
Someone else applied for the former spouse	1	-	1	-	2
Separation agreement not incorporated in court order	1	-	1	-	2
Miscellaneous reasons	-	5	1	-	6

<sup>a</sup>Cases may have been unapproved for more than one reason.

At the time of our follow-up visits in May 1984, the services reported the following caseload statistics. We did not verify the data.

Former Spouse Applications for Direct Payments  
As of April 30, 1984

<u>Service</u>	<u>Total</u>	<u>Approved</u>	<u>Rejected</u>	<u>Pending or in process</u>
Army	1,415	915 (65%)	403 (28%)	97 (7%)
Navy	1,156	833 (72%)	232 (20%)	91 (8%)
Air Force	2,916	1,651 (57%)	1,223 (42%) <sup>a</sup>	42 (1%)
Marine Corps	212	146 (69%)	55 (26%)	11 (5%)
<b>Total</b>	<b>5,699</b>	<b>3,545 (62%)</b>	<b>1,913 (34%)</b>	<b>241 (4%)</b>

<sup>a</sup>The Air Force stated that about 653 of the rejections were correctable.

DIRECT PAYMENT REVIEW AND APPROVAL  
PROCEDURES INCONSISTENT

DOD fully intended that the direct payment provisions of the act be implemented in as consistent a manner as possible among the four military services. At the outset, DOD recognized that it would be hard to justify or explain why the individual services should apply different procedures or criteria to similar cases in deciding whether to accept or reject an application for direct payment. To help ensure this consistency, DOD undertook several initiatives immediately before and after the effective date of the act:

- In October 1982, DOD called a joint service conference attended by representatives of all organizations responsible for reviewing and approving former-spouse direct-payment applications. The participants discussed processing procedures, the type of documentation required for a direct payment application to be acceptable, and interpretations of terminology used in the act and in court orders.
- Shortly after the joint conference, DOD circulated a "Questions and Answers" paper to service officials responsible for processing direct payment applications, again aimed at achieving commonality in interpreting and implementing the act.
- In January 1983, shortly before the act became effective, DOD published proposed rules for implementing the act in the Federal Register (p. 4003, Vol. 48, No. 20,

January 28, 1983). Written comments on the proposed rules were accepted until March 15, 1983; however, final rules had not been published as of September 15, 1984.

--In late-March 1983, after the services had gained some experience in implementing the act, DOD again called a joint-service conference to resolve any remaining differences or inconsistencies in procedures or interpretations.

#### Implementation differences corrected

Despite these early efforts to ensure that applications for direct payment were handled fairly and consistently among the services, some differences occurred. As a result, former spouses and retired members with similar cases were sometimes treated differently, depending upon the service from which the member had retired. The following are some examples:

- The services initially had different procedures for handling court orders that based the division of retired pay on hypothetical situations--such as a court order which stated that the former spouse should receive one-half of the disposable retired pay of a major with 15 years of service, when in fact the member retired as a colonel with 20 years of service. The Army, Navy, and Marine Corps would not accept such orders. Army officials explained that the act allows the division of the member's actual retired pay and that an amount based on a hypothetical situation is not the member's actual retired pay and, therefore, is not allowable by the act. The Air Force, on the other hand, did accept such court orders and calculated the amount, using the formula ordinarily used to calculate disability retired pay. The Air Force no longer accepts such court orders, and is now consistent with the other services.
- During early implementation, the Marine Corps would not accept court orders that expressed the former spouse's portion of retired pay as a fraction or divided the retired pay "equally" because the act stated that the division had to be expressed as a "percentage" or a specified dollar amount. The other three military services accepted court orders having such provisions. In April 1983, DOD instructed the Marine Corps to bring their interpretation of court order language in line with that of the other services, and since that time the Marine Corps has accepted such court orders.
- The services' procedures for notifying active duty members that a court order had been served were initially different. The act (10 U.S.C. 1408(g)) requires that the service member be notified as soon as possible, but not

later than 30 days after a court order calling for direct payments to a former spouse has been effectively served on the military service. In those instances where the service member was still on active duty at the time the court order was served, the Navy and Marine Corps promptly notified the member, but the Army and Air Force did not notify him until he retired. The Army and Air Force have now revised their notification procedures.

--The Marine Corps initially would not accept court orders in which the division was expressed as a numerical formula, such as "1/2 of 17/23 of the member's retired pay." A Marine Corps official said that they were concerned that a calculation error might place an unnecessary liability on the government. The other three services accepted such court orders and computed the amount involved, as the Marine Corps now does.

We noted that, even though the implementation procedures had been revised to make them more consistent throughout the military, the services had not re-examined the previously rejected court orders to determine their acceptability under the revised procedures. As a result, we identified several rejected court orders which, under current procedures, would have been accepted. Service officials said that they did not routinely re-examine previously rejected cases.

#### Implementation differences which continue

While the inconsistent procedures and interpretations discussed above have been resolved, the following differences remained at the time of our follow-up visits in May 1984:

##### Narrative formulas

If a court order uses a narrative formula for dividing retired pay, such as "one-half of the ratio that the months the member's service during marriage has to the member's total service," the Navy and Marine Corps will not honor the order because the type of service--i.e., creditable versus noncreditable for retirement purposes--is not specified. The Army and Air Force, on the other hand, honor such court orders and assume that the court intended that creditable service be used in the formula.

##### Acceptance of orders with unclear wording

The Marine Corps will not honor court orders which state that the "proceeds" of retired pay will be divided unless it is clear from the order that the court contemplated a monthly payment. According to a Marine Corps official, the term "proceeds" could mean that the court intended that an actuarially determined lump-sum amount be paid to the former spouse, and the act



does not allow lump-sum payments. The Army, Navy, and Air Force do not interpret "proceeds" in this manner, and will honor such court orders unless the order clearly calls for a lump-sum payment, in which case the order cannot be honored.

The Marine Corps, in contrast to the other three services, will not honor court orders that express the division as "an amount equal to" a percent of retired pay because, according to a Marine Corps official, this wording does not direct the division to come from retired pay.

Also, the Marine Corps will not honor court orders instructing the member to pay the former spouse her portion of retired pay or appointing the member as the "trustee" for the former spouse's portion. A Marine Corps official said that if, in such cases, the Marine Corps paid the former spouse directly, the member would be unable to fulfill his responsibilities. The other services accept court orders having such language because they believe that the court intended the former spouse to receive a division of the member's retired pay.

#### Acceptance of orders where state laws are silent on retired pay divisions

The services treat court orders differently if they were issued in states where the laws--statutory or case law--neither specifically authorize nor prohibit courts from dividing retired pay in divorce cases. The act provides that court orders should be honored only if the order is "in accordance with the laws of the jurisdiction of that court" (10 U.S.C. 1408 (a)(2)(A)). The Army and Air Force interpret this to mean that court orders from jurisdictions where the laws are silent with regard to the courts' authority to divide retired pay should not be accepted. These services will reconsider the direct payment application if the former spouse can provide evidence that the particular state laws do in fact allow divisions of retired pay.

In contrast, the Navy and Marine Corps will accept court orders from such states where the law is silent with regard to the courts' authority to divide retired pay. These services place the burden on the member to show that the particular state laws prohibit divisions of retired pay if the member wants to prevent payments from occurring. (A few states specifically prohibit courts from dividing retired pay. The services will not honor division-of-property court orders from these states even though the division-of-property agreement may have been entered into voluntarily.)

#### Acceptance of modified court orders

The act states that, in the case of court orders which became final before June 26, 1981 (the date of the McCarty decision), payments may be made only in accordance with the court order in effect on that date, without regard to any sub-

sequent modifications (Public Law 97-252, sec. 1006(b)). Consistent with this provision, all services disregard subsequent modifications that add a direct payment provision to a pre-June 26, 1981, final court order. Also consistent with the act, the Army, Air Force, and Marine Corps disregard subsequent modifications made as a result of the McCarty decision which delete a direct payment provision, even though the former spouse may have exchanged her share of retired pay for other property of equal value. The Navy, however, requires that the former spouse have the subsequent modification deleting direct payments officially set aside by the court before it will honor the court order. A Navy official said that the reason for this procedure is that, until the modification is vacated, a court order directing payments from retired pay is unenforceable in the state involved.

The Navy's procedure may seem reasonable, but the legislative history of this provision indicates that the Congress specifically did not want the former spouse divested of periodic payments of retired pay because of a subsequent court order modification implementing the McCarty decision, i.e., a modification deleting a division of retired pay.<sup>4</sup> Therefore, it would appear that the Navy should follow the same procedure followed by the other services. If the retiree then believes that the result is unjust, he may return to the state court and seek appropriate relief.

#### Differences in review and notification procedures

The services differ in the scope of their review of the former spouse's application when she applies for only one type of payment although the court order may have awarded more than one type of payment. For example, if a court orders both child support payments and a division of retired pay as property but the former spouse applies only for child support payments, the Army will act only on her specific application without informing her that she can also apply for direct payments under the division-of-property provision. The Navy will process the request for child support direct payments, but in contrast to the Army, it will advise the former spouse of what needs to be done to receive direct payments under the division-of-property provision. The Air Force and Marine Corps, on the other hand, will process both child support and division-of-property payments without requiring that the former spouse specifically apply for direct payments under the latter provision.

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<sup>4</sup>See H.R. Report No. 749 (Conference), 97th Congress, 2nd Session, 166, reprinted in 1982 U.S. CODE CONG. & AD. News, 1569-1573.

### Inconsistent documentation requirements

The Army and Marine Corps instructions for the direct payment application contain documentation requirements that are (1) inconsistent with the other services' documentation requirements, and (2) inconsistently followed within the services. The following are examples of this inconsistency:

- The act states that the court order must be final before it may be honored by the military service. To ensure that the court order is final, Army instructions state that an attorney must sign a statement that the order is final. The other services require a similar statement, but allow it to be signed by the former spouse or her attorney. We noted that the Army does not hold to its requirement except in the case of recent court orders--a fact not disclosed in the Army's instructions.
- The act requires that, for a former spouse to receive direct payments for a division of retired pay as property, the marriage must have lasted at least 10 years during which the member performed at least 10 years of creditable service. To establish the date of marriage, the Marine Corps instructions state that, if a date is not specified in the decree, the former spouse must provide a certified copy of the marriage certificate. The other services accept an uncertified marriage certificate in this circumstance. A Marine Corps official explained that they prefer a certified marriage certificate, but that in practice they accept other less stringent documentation--again, a fact not stated in the Marine Corps instructions.

### TIMELY PROCESSING OF DIRECT PAYMENT APPLICATIONS

The act requires that, in cases where the member is already entitled to receive retired pay on the date the court order is effectively served on the military service, payments to the former spouse must begin within 90 days (10 U.S.C. 1408 (d)(1)). We found that all services occasionally missed the 90-day time limit for beginning to make payments. In those few instances where the time limit was exceeded, the delays ranged from a few days to over 3 months. While there were extenuating circumstances in some instances for not meeting the 90-day timeframe, generally the case file contained no explanation for the time limits being exceeded; some appeared to have been simple oversights. Because of the small number of cases involved and the newness of the act at the time of our initial field visits, we do not believe timely processing to be a significant problem in any of the services.

#### ADEQUACY OF REJECTION NOTIFICATIONS

When a military service determines that a court order submitted is unacceptable, the former spouse deserves a full, clear explanation of why payments cannot be made under the act. If the direct payment application contains clear evidence of a deficiency that cannot be corrected--such as the member being on a disability retirement or the marriage being of insufficient length to be covered by the act--then a simple statement explaining the reason the court order was rejected is sufficient. However, if the direct payment application contains several deficiencies which can be corrected--such as the documents not being served by certified mail, proof of marriage date not being provided, the documents not clearly showing that the court order was final, or some other combination of correctable deficiencies--then it seems reasonable that the former spouse should be given a clear explanation of all the deficiencies so that she can correct them at one time without several iterations.

At the time of our initial field visits, we found that each service had established procedures for notifying the former spouse whether her application for direct payment was acceptable. However, except for the Navy, the services sometimes neglected to provide in their initial notification letter a list of all deficiencies which caused the rejection of the former spouse's application. We noted the following examples of this problem:

- The Air Force notified a former spouse that the court order could not be honored because, in its opinion, the laws of the particular state did not allow treating retired pay as property. When the former spouse's attorney resubmitted the court order along with evidence that the state law did permit a division of retired pay as property, the Air Force rejected the application a second time because it had not been served by certified mail. The Air Force could have informed the former spouse of this requirement in the first rejection notification.
- The Army notified a former spouse that an application for direct payment was unacceptable because there was no evidence that the court order was final. However, the Army did not point out other deficiencies in this application: It contained no date of marriage; it contained no statement that the Soldiers' and Sailors' Civil Relief Act had been observed during divorce proceedings; and it lacked the required documentation to show that the court had personal jurisdiction of the member. Any of these deficiencies would have caused the application to be rejected.

The Army's failure to give a complete explanation for rejection in the first letter necessitated additional correspondence.

- The Marine Corps notified a former spouse that her application could not be approved because it was not served by certified mail and did not contain evidence that the court order was final. After obtaining documentation to show that the court order was final, the former spouse resubmitted it by certified mail. This time, the Marine Corps rejected the application because the member was receiving disability retired pay, which is not divisible under the act. An initial complete review of the case would have disclosed this deficiency.

During our follow-up visits, officials of all the services said that they are now attempting to provide a complete list of correctable deficiencies in their initial rejection letter to the former spouse.

In addition to the above problem, we found that the Marine Corps rejection notifications were sometimes confusing and did not always clearly explain why the applications were not honored. Marine Corps rejection letters contain standardized statements which were developed to respond to any deficiency which might be found in the former spouses' applications. The Marine Corps official assigned to review an application then selects from this group of statements the proforma statement applicable to the case being reviewed. However, at the time of our initial field visit, one of the standardized statements used language that did not clearly explain the specific reason a court order was unacceptable because the same standardized language was used if the court order

- provided for no payment to the former spouse;
- awarded payments but did not specify that they come from the member's retired pay;
- required the member to make payments directly to the former spouse;
- divided retired pay using an unclear narrative formula;
- awarded the former spouse a portion of retired pay "proceeds," without indicating that the portion was to be paid monthly; or
- awarded the former spouse "an amount equal to" a portion of the member's retired pay.

At the time of our May 1984 follow-up visit, we found that the Marine Corps had developed, or were in the process of developing, specific language to be used in two of the above instances--where the court order awarded payments but did not specify that they come from the member's retired pay, and where the order required that the member make payments directly to the former spouse. Language specifically tailored for these situations will be helpful. The unclear, standardized language, however, will still be used when direct payment applications are rejected for the other reasons listed above.

#### AGENCY COMMENTS AND OUR EVALUATION

DOD officials stated that, given the complexity of the act, they were pleased that we found the services generally to be doing a good job implementing the direct payment provisions. They commented that developing comprehensive policy guidelines is an evolutionary process in a complex area such as this, and that time is needed to adjust to unforeseeable circumstances and to evaluate the myriad of possible interpretations that evolve from the legislation. They further commented that the range of interpretation differences is small and confined to highly technical issues, and that there have been on-going actions to minimize the significance of these differences.

With respect to the procedural differences we noted among the services in reviewing and approving former spouse requests for direct payments, DOD officials stated that several steps have been taken since the completion of our field work to eliminate remaining inconsistencies. They stated that DOD expects to issue final regulations in the Fall of 1984, and that this should help clear up remaining issues. They further commented that the procedural differences were caused by the complexity of the subject matter and by the limited expertise of the staff in this aspect of local law; but that, within less than two years, the services have overcome these limitations.

DOD officials agreed that each applicant is entitled to a full, clear explanation of why payments cannot be made under the provisions of the act. In response to this issue, in March 1984, DOD held a writing clinic for service personnel who process applications. The service representatives were encouraged to respond in plain, descriptive English while avoiding technical, legalistic words and phrases. However, DOD officials said that it sees no need to provide all applicants with laundry lists of deficiencies. When the application contains clear evidence that an uncorrectable deficiency exists that precludes payment under the act, a simple statement explaining the deficiency should suffice.

We agree with DOD that, when an uncorrectable deficiency exists, a simple explanation of the deficiency is adequate.

However, many requests for direct payment contain several deficiencies which are correctable--and none that are uncorrectable. In these cases, we believe that former spouses deserve the "laundry list" of deficiencies so that they can correct them all at one time without repeated correspondence with the services.

### CHAPTER 3

#### HOW TAX WITHHOLDING PROVISIONS AFFECT AMOUNTS RECEIVED BY MEMBERS AND FORMER SPOUSES

The income tax withholding provisions of the act may be producing results not initially contemplated by the Congress. The act's history indicates that the Congress wanted to allow for the equitable apportionment of military retired pay between the member and his former spouse in divorce cases as determined by the state courts. To achieve this objective, the act authorizes the division of "disposable retired or retainer pay." Disposable retired pay is determined by deducting, among other things, amounts withheld for income taxes. These provisions may be necessary to ensure that income tax obligations are satisfied; however, they can cause the amount received by the former spouse to increase or decrease as a result of changes in the member's tax status. Also, the Internal Revenue Service's requirement that military retired pay be treated as wages solely of the member for tax withholding purposes works to the advantage of the member and to the disadvantage of the former spouse.

The act provides that, subject to prescribed limitations, the military services are to make payments directly to the former spouse of "disposable retired or retainer pay" as provided in the court order for child support, alimony, or a division of property. "Disposable retired or retainer pay" is defined in 10 U.S.C. 1408(a)(4) as the total monthly retired or retainer pay (other than disability retired pay), to which a member is entitled, less certain amounts including those which

(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled; [and]

(D) are withheld under section 3402(i) of the Internal Revenue Code of 1954 (26 U.S.C. 3402(i)) if such member presents evidence of a tax obligation which supports such withholding.<sup>1</sup>

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<sup>1</sup>Under 26 U.S.C. 3402(i), taxpayers, including retired military personnel, can request additional withholding. This section was designed generally to encourage increased withholdings at the source. The implementing regulations provide that taxpayers may request additional withholdings from their wages or retired pay, and the employer must comply if the amount that the taxpayer requests to be deducted and withheld does not exceed the amount that remains after the employer has deducted and withheld all amounts otherwise required to be deducted and withheld by federal, state, and local law.



We noted that (1) subsection (C) could increase the former spouse's amount of retired pay if the retired member takes on additional dependents; (2) subsection (D) could reduce the amount of retired pay received by the former spouse if the member can present evidence of a tax obligation to support the additional withholding; and (3) even if neither of these events occurs, the Internal Revenue Service requirement that retired pay be treated as wages solely of the member for withholding purposes can result in the member's receiving a higher percentage and the former spouse a lower percentage of the net proceeds than that anticipated by the court order.

#### POSSIBLE EFFECT OF SUBSECTION (C)

Subsection (C) states that, in computing disposable retired pay, the services must deduct amounts properly withheld for federal, state, and local income taxes to the extent that such amounts are "not greater than would be authorized if such member claimed all dependents to which he was entitled." (Emphasis added.) This means that if the member acquires other dependents--for example by marriage or birth of a child--he must claim those new dependents for purposes of calculating disposable retired pay. Because additional dependents will reduce his tax liability, disposable income will increase. Thus, the amount received by the former spouse will increase as she shares in the benefits derived from a change in the member's tax status, even though the change resulted from an event unrelated to the member's earlier divorce. The effect of this subsection is illustrated below. The illustration uses 1983 tax rates and assumes that (1) the member has remarried; (2) the member's gross retired pay is \$2,000 per month; (3) he has no other dependents; (4) he has no other deductions in calculating disposable retired pay; and (5) the court ordered an equal--50 percent--division of retired pay.

Possible Effect of Subsection (C)  
on Amounts Paid to Member  
and to Former Spouse

	<u>Before member remarried</u>	<u>After member remarried</u>
Gross retired pay	\$2,000.00	\$2,000.00
Less income tax withholding:		
1 dependent, single rate	361.40	
2 dependents, married rate	<u>          </u>	<u>263.80</u>
Disposable retired pay	<u>\$1,638.60</u>	<u>\$1,736.20</u>
Member's and former spouse's amount	<u>\$ 819.30</u>	<u>\$ 868.10</u>

As can be seen from this illustration, the tax benefits of one additional dependent is \$97.60. However, rather than receiving full benefit of the reduced tax liability, subsection (C) requires the member to share this amount with his former spouse. Thus, the amount received by both the member and the former spouse increased \$48.80 per month simply because the member remarried. The question is whether the Congress contemplated that the former spouse should benefit if the member's tax liability decreases for reasons such as this.

Another possible effect of subsection (C) is that, if the member understates his dependents and thus has a larger amount than necessary withheld, the former spouse would receive less than she should. A member's income tax withholdings could be, and in some cases were based on the higher no-dependent single or married tax rate. In the above illustration, if federal income taxes were withheld at the no-dependent single tax rate, the member's income tax withholding would have increased to \$386.40. This, in turn, would have reduced the payment to the former spouse to \$806.80.

We found that only the Air Force has procedures which attempt to ensure that the member claims all dependents to which he is entitled. The Navy accepts without verification members' current income tax withholding statements--except those of individuals claiming the no-exemption single or married rates, or one-exemption married rate--so long as the number of exemptions has not been changed after the former spouse's application for direct payments was received. The Army and Marine Corps similarly accept without verification members' current income tax withholding statements, regardless of the number of dependents claimed.

#### POSSIBLE EFFECT OF SUBSECTION (D)

A possible effect of subsection (D) is that the former spouse's payment can be reduced if the member has outside income which places him in a higher tax bracket. Subsection (D) states that in computing disposable retired pay, the member can increase the amount of withholdings deducted if he "presents evidence of a tax obligation which supports such withholding."

A recent Comptroller General Decision (B-213895, April 25, 1984) held that, in using subsection (D) to compute disposable retired pay, the deduction of regular and additional federal income tax withholding from gross retired pay may not be at a higher combined percentage rate than the retiree's projected effective tax rate--that is, the ratio of the retiree's anticipated total income taxes to his anticipated total gross income from all sources. This ruling means that a retiree with a large income in addition to his retired pay may not subtract his entire tax obligation from his gross retired pay to compute disposable retired pay. However, to the extent that his effective tax rate, based on his entire income, exceeds the tax rate that would apply to retired pay without any other income, subsection (D) will still permit the retiree to reduce "disposable" retired pay, and thus the amount the former spouse will receive.

The possible effect of subsection (D) is illustrated below, using the following assumptions: (1) the member's gross military retired pay is \$2,000 per month; (2) he receives \$500 per month in other income; (3) his current wife receives \$500 per month in wages; and (4) the court ordered a 50-percent division of retired pay.

Possible Effect of Subsection (D)  
on Payment to Former Spouse

	<u>Withholding based on retired pay only</u>	<u>Withholding using effective tax rate</u>
Gross retired pay	\$2,000.00	\$2,000.00
Less:		
Withholding on retired pay only (13.19 percent)	263.80	
Withholding based on total income (17.46 percent)	<u>                    </u>	<u>349.20<sup>a</sup></u>
Disposable retired pay	<u>\$1,736.20</u>	<u>\$1,650.80</u>
Payment to former spouse	<u>\$ 868.10</u>	<u>\$ 825.40</u>
Decrease in payment to former spouse because the member has other income		<u>\$ 42.70</u>

<sup>a</sup>The effective tax rate is the ratio that the monthly tax withholding at the two-dependent married rate on the member's joint total income of \$3,000 per month--\$523.90--is to the member's joint total income; i.e., \$523.90 divided by \$3,000 = 17.46 percent.

In contrast to subsection (C), we found that, although neither the act nor DOD's proposed regulations specifically describe or define what constitutes adequate evidence of a tax obligation to support the additional withholdings, the services are requiring that retirees submit some form of proof before they will subtract the extra withholdings in computing disposable retired pay. However, as illustrated above, to the extent that a retired member can present evidence of a tax liability to support additional withholdings, and consistent with the Comptroller General's decision, the amount received by the former spouse will be reduced. The question, then, is whether the Congress contemplated that the amount of retired pay received by the former spouse should be reduced because the member has other income which puts him in a higher tax bracket.

EFFECT OF INTERNAL REVENUE SERVICE  
REQUIREMENT TO WITHHOLD ONLY FROM RETIREE

The Internal Revenue Service requires that income tax withholdings be based on the member's gross retired pay before subtracting any amount to be paid to a former spouse, and that the amount withheld be credited in whole toward payment of the member's final tax liability. The effect of this requirement is to inflate the rate of withholding on the member's share of his retired pay; this, in turn, reduces disposable retired pay and thus the former spouse's portion. The member, however, will receive a tax refund of the excess amount withheld when he files his federal income tax return, no part of which he is presently obligated to share with his former spouse, whereas the former spouse will have to pay income taxes on her portion of retired pay when she files her income tax return. Thus, if the court order calls for a specific percentage apportionment of retired pay between the member and the former spouse, the net effect of the Internal Revenue Service requirement--aside from any other situations as described above--will be that the after-tax amount will increase for the member and decrease for the former spouse. This is illustrated below using the following assumptions:

(1) the member's gross retired pay is \$2,000 per month; (2) both the member and his former spouse are unremarried and have no other dependents; (3) neither the member nor his former spouse has outside income; and (4) the court ordered a 50-percent division of retired pay.

Effect of Internal Revenue Service Withholding Requirement  
on Payment to Former Spouse<sup>a</sup>

	<u>Retired member</u>	<u>Former spouse</u>
Gross retired pay	\$2,000.00	
Less tax withholding: 1 dependent, single rate	<u>(361.40)</u>	
Disposable retired pay	<u>\$1,638.60</u>	
Division of disposable retired pay	\$ 819.30	\$819.30
Tax refund to member	208.90	
Payment by former spouse		<u>(86.30)</u>
Net spendable after-tax	<u>\$1,028.20</u>	<u>\$733.00</u>

<sup>a</sup>For purposes of illustration, the amounts shown are pro-rated monthly values. In practice, the after-tax effect of the withholding requirement would not be seen until annual tax returns were filed.

AGENCY COMMENTS

DOD stated that we had accurately described the computational process related to the deduction of tax withholding, but that it could not comment on this issue since it is a matter for congressional consideration.

## CHAPTER 4

### PROCEDURES FOR AUTHORIZING MEDICAL, COMMISSARY, AND EXCHANGE BENEFITS

The Uniformed Services Former Spouses' Protection Act gives certain former spouses medical care in military facilities or through the CHAMPUS program, if they do not have an employer-sponsored health plan. It also authorizes them to use military commissaries and exchanges. However, for a former spouse to be eligible for these benefits, (1) the divorce must have become final on or after February 1, 1983; (2) the former spouse must be unremarried; and (3) the marriage must have lasted at least 20 years, during which time the member served 20 years of creditable service.<sup>1</sup> The means by which a former spouse obtains these benefits is through the issuance of a military ID card.

Complete data on the total number of ID-card applications received, approved, and disapproved was unavailable, but the Defense Eligibility Enrollment System (DEERS) shows that, as of October 31, 1983, the services had issued 328 ID cards to former spouses, as follows:

<u>Former Spouse ID Cards Issued According to DEERS</u>	
<u>Service</u>	<u>Number</u>
Army	100
Navy	64
Air Force	155
Marine Corps	<u>9</u>
Total	<u>328</u>

However, our review indicated that DEERS data may be incomplete or not up-to-date. For example, as of July 21, 1983, the Marine Corps had approved 12 ID-card applications, whereas the DEERS records show that only 9 cards had been issued as of October 31, 1983.

Since the Navy and Marine Corps maintain centralized control of approval process for ID cards, we tested to determine the reasons applications were disapproved. Records tested indicate that, of the total number of applications received by these services, 18 percent were approved and 82 percent were disapproved. This test also indicated that the predominant

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<sup>1</sup>These criteria were amended by section 645 of the Department of Defense Authorization Act, 1985. (See 130 Cong. Rec. H10220 [daily ed. September 26, 1984].)

reason these two services denied requests for ID cards was that the divorce became final before February 1, 1983--79 percent of disapproved applications. The other 21 percent of the denials occurred because the length-of-service and/or length-of-marriage criteria had not been met.

#### SERVICES' PROCEDURES FOR APPROVING ID CARDS VARY

The services' procedures for approving and issuing ID cards to former spouses vary in (1) the organizational levels responsible for reviewing and approving ID-card applications, (2) the documentation required to demonstrate eligibility, and (3) the use of temporary ID cards. As a result of these differences, some eligible former spouses wait longer to receive these benefits and expend more effort to submit an acceptable application, because of the military service involved.

#### Level of approval authority

The services assigned the responsibility for reviewing and approving former spouse applications for ID cards to different organizational levels. The services ordinarily approve and issue regular ID cards at local installations. The Army and Air Force decided to follow their usual procedure for former spouses. However, the Navy and Marine Corps decided to deviate from their normal practice and to centralize the approval process at a headquarters office. Although they left the issuing responsibility at the local installation level, Marine Corps officials said that they believed centralized approval authority would expedite the approval process because headquarters maintains members' service records. Navy officials said that they decided to centralize approval authority because a headquarters office would be better able to (1) handle the inevitable questions that would arise about the act, (2) keep abreast of anticipated changes to the act, and (3) spot false or tampered eligibility documents.

Rather than expediting the approval process as Marine Corps officials had hoped, centralizing the approval authority might cause some Marine Corps and Navy former spouses to wait longer than Army or Air Force former spouses to receive ID cards. We found that an Army or Air Force former spouse who had all the necessary documentation to establish eligibility could go to a local office and apply for and receive an ID card in 1 day. In contrast, former spouses of Navy or Marine Corps members must first send the documentation to the centralized approving office (or they may hand-deliver it if they live in the Washington, D.C., area), wait for the central office to process and return an approved form, and finally, take the approved form to a local



ID-card-issuing office to receive the card. The Navy took an average of 10 working days to review and approve an ID-card application, and the Marine Corps took an average of 22 working days.

#### Documentation requirements

All the services use the same type of documentation to establish ID-card eligibility, but the requirements differ concerning (1) the strength of documentation to be provided and (2) who should supply it--the service or the former spouse. The following are examples of these differences:

- To ensure that the marriage lasted 20 or more years and that the divorce became final on or after February 1, 1983, the Navy requires former spouses to submit certified true copies of the marriage certificate and divorce decree. However, the other services accept uncertified photocopies. Navy officials said that certified copies provide a greater degree of assurance of eligibility. The Navy procedure seems reasonable since there are few other ways to verify length of marriage and divorce date easily.
- To ensure that the former spouse has not remarried, the Air Force and Marine Corps require a simple signed statement from the former spouse that she is unremarried; the Navy requires that the signed statement also be notarized; while the Army requires merely an oral statement. Navy officials said that they take the extra step to reduce the likelihood of fraud, whereas Army officials said that they believe former spouses will give an honest answer if asked. Requiring a signed statement seems to be reasonable, but requiring notarization may only inconvenience the former spouse without adding much assurance that the statement is valid. Notarization simply indicates that the statement was signed in the presence of a notary; it does not attest to the validity of the statement itself.
- To ensure that the member served 20 years of creditable service during the 20 years of marriage, the Army is the only service requiring the former spouse to obtain the member's service record. Army officials said that they tell the former spouse how to obtain the records, but that they do not obtain them for her. In contrast, the other three services obtain this information from service files.

With regard to the requirement that the former spouse not be covered by an employer-sponsored health plan to be eligible for medical benefits, all the services were consistent in requiring that she certify that she is not covered by such a plan.

#### Use of temporary ID cards

Since it can take up to 90 days to verify a member's service record to ascertain the years of creditable service, issuing a temporary ID card is one way to reduce the former spouse's waiting time to receive benefits. Not all the services, however, issue temporary ID cards to former spouses. Initially, only the Air Force and Navy issued temporary cards to former spouses who submitted documentation which satisfied the act's other criteria, and who stated their belief that the creditable service criterion was also satisfied. However, on August 7, 1984, the Army said it would also begin issuing temporary ID cards to former spouses who appear to meet all eligibility criteria but are awaiting documentation to verify the members' years of creditable service. Thus, the Marine Corps is now the only service which does not issue temporary ID cards to former spouses.

Marine Corps officials said that they do not issue temporary ID cards to former spouses because they want to be certain that only individuals actually entitled to the benefits receive them. They believe that neither a temporary nor a permanent card should be issued until they have received confirmation that the former spouse meets all the eligibility criteria specified in the act. Marine Corps officials said that they believe it better for an eligible former spouse to wait longer to receive benefits than for the Marine Corps to run the risk of granting even temporary privileges to an ineligible former spouse.

#### PROVIDING MEDICAL CARE TO FORMER SPOUSES NOT MEETING NORMAL ELIGIBILITY CRITERIA

When the Congress enacted the Uniformed Services Former Spouses' Protection Act, it recognized that the legislative criteria for receiving medical care was somewhat restrictive. Only former spouses whose divorces became final on or after February 1, 1983, would be eligible, even though they may have been married more than 20 years during which time the member served more than 20 years of creditable service. To deal with hardship cases where all the other criteria were met except that the divorce became final before February 1, 1983, the conference report (House Report No. 97-749) which accompanied the act "strongly" encouraged the service secretaries to authorize the use of military medical facilities by "deserving" former spouses.

As shown in the following table, as of September 30, 1983, 199 former spouses had applied for secretary-designee status, and 13 applications had been approved.

<u>Applications from Former Spouses for Secretary-Designee Status</u>		
<u>Service</u>	<u>Applications</u>	<u>Approved</u>
Army	114	4
Navy (including Marine Corps)	81	9
Air Force	<u>4</u>	<u>0</u>
Total	<u>199</u>	<u>13</u>

Secretary-designee status may not be accomplishing what the conferees had hoped. Secretary-designee status is a limited concept. It generally allows the designated individual to receive treatment for a specific disease or condition at a specific military health facility. The secretary may authorize treatment only at those medical facilities operated by his service, and the designated individual is not authorized to receive treatment under CHAMPUS. Therefore, medical treatment may be unavailable to a deserving former spouse either if she does not live near a medical facility operated by the service from which her former husband retired, or if the medical facility she lives near does not have the capability to treat her condition.

We found that each service applies different criteria for determining whether a former spouse should be granted secretary-designee status. Also, the services differ in the type of medical care they provide once such status has been granted:

- The Army requires that a former spouse clearly establish her medical condition as having resulted from the member's military service, but it does not require that the marriage have lasted 20 years during which the member served in the military. Once secretary-designee status is granted, the Army provides treatment only for the specific medical condition at a specified medical facility.
- The Navy and Air Force require the former spouse to have met all the criteria for receiving medical benefits specified in the act, except the divorce date. Also, the Air Force requires the former spouse to show that the medical problem was caused or aggravated by the member's service, whereas the Navy requires only that the medical

need be documented. Once secretary-designee status is granted, the Navy will treat any medical condition at any Naval medical facility within the United States, whereas treatment by the Air Force varies depending upon the degree of disability caused by the medical condition. If the former spouse is disabled, the Air Force treats all her medical conditions at a specified Air Force medical facility, but if she is not disabled the Air Force treats only the specific medical condition caused or aggravated by the member's service.

#### AGENCY COMMENTS AND OUR EVALUATION

DOD agreed with our observations concerning the services' varying procedures for approving ID cards. It said that a revised DOD Instruction 1000.13, "Identification Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals," had been issued on June 6, 1984, and that the Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics) is working with the services to make the procedures for issuing ID cards more consistent. Our review of the revised DOD instruction indicates that it simply provides that, along with other eligible individuals, certain former spouses are now eligible to receive ID cards. It does not require that procedures for issuing ID cards to former spouses, or others, be uniform among the services, and we believe that such a requirement may be unnecessary. However, we believe that oversight by the Assistant Secretary's office will be helpful in making the procedures for issuing ID cards to former spouses more consistent.

With regard to providing medical care to deserving former spouses under the secretarial-designee authority, DOD officials said that the Office of the Assistant Secretary of Defense (Health Affairs) is evaluating how to provide greater uniformity of medical services for former spouses.

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## U.S. House of Representatives

### COMMITTEE ON ARMED SERVICES

Washington, D.C. 20515

NINETY-EIGHTH CONGRESS

MELVIN PRICE (ILL.), CHAIRMAN

April 19, 1983

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Mr. Charles A. Bowsher  
Comptroller General  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Bowsher:

Several years ago, at the request of the Committee on Post Office and Civil Service, the General Accounting Office reviewed the regulations promulgated and the procedures followed by the Office of Personnel Management in the implementation of Public Law 95-366, relative to payments of a portion of retired pay to the former spouse of a retired Federal employee.

I would like to request that the General Accounting Office conduct a similar review of the implementing regulations and procedures being used by the Department of Defense and the individual services with respect to the Uniformed Services Former Spouses' Protection Act, Title X of Public Law 97-252, which became effective February 1, 1983.

In view of the complexity of this legislation and the variety inherent in the process, it is not surprising that numerous legal questions have arisen that require clarification. Concern has been expressed, however, that the department and the services may be applying an overly restrictive legal interpretation to certain provisions of the statute, despite the congressional intent clearly expressed in the legislative history. As in the case of OPM's implementation of Public Law 95-366, this could result in the denial of some valid court orders, creating unnecessary legal expense for the individuals involved.

For example, a case was recently brought to my attention in which the military member was still on active duty at the time of the divorce settlement. Under the terms of Public Law 97-252, the court order must specifically provide for the payment from the disposable retired or retainer pay of the member, expressed in dollars or as a percentage of retired or retainer pay. In the case in question, it was impossible for the court to specify the percentage of retired pay to which the former spouse would be entitled without knowing the number of years of service upon which the member's retired pay would be based. The court, therefore, specified that the division of retired pay would be based upon a fraction and set, as the numerator of that fraction, the number of months

Mr. Charles A. Bowsher

April 19, 1983

that the marriage lasted during the member's military service. The denominator, in this instance, would be the number of months of military service creditable for retirement, to be filled in by the military finance center at the time of the member's retirement.

This should have presented no problem; the conversion of a fraction to a percentage and vice versa is a basic mathematical calculation. Apparently, some of the services would have accepted this fraction specified in the court order as interchangeable with a percentage without difficulty. The Army, however, determined that filling in the denominator in accordance with the terms of the court decree amounted to requiring the Army to act as a judge. The Army, accordingly, rejected the court order. This particular situation has subsequently been resolved in favor of completing the mathematical computation as specified in the court order.

Another problem recently brought to my attention is outlined in the attached letter to the Secretary of Defense. While I fully appreciate the need to ensure adequate safeguards against fraud, it is unclear that such a diversity of procedures is required in order for the services to fulfill their basic fiduciary responsibilities.

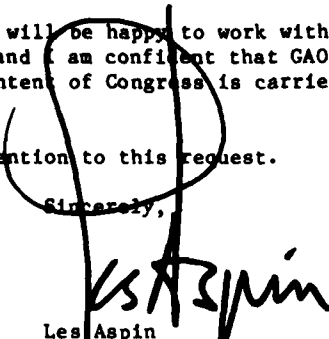
In view of the February 1, 1983, effective date of the Act, a plethora of similar technical difficulties are likely to surface in the immediate future. Although it would be logical for the services to follow uniform procedures whenever possible, it appears that, at least at this juncture, this is not the case. It would be very helpful to this committee for GAO to evaluate the implementation process and pinpoint specific problems that require either administrative or legislative correction.

I would also appreciate your reviewing the adequacy of training and information being provided to those who must either implement the terms of the law or provide information to prospective beneficiaries, whether at the service headquarters level, at the individual service finance centers or at the local installation level.

The subcommittee staff will be happy to work with your staff in providing more detailed information, and I am confident that GAO can play a valuable role in ensuring that the intent of Congress is carried out without undue difficulty and delay.

Thank you for your attention to this request.

Sincerely,

  
Les Aspin  
Chairman, Military Personnel and  
Compensation Subcommittee

LA:kha  
Enclosure



COMPTROLLER

## ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

27 SEP 1984

Mr. Frank C. Conahan  
Director, National Security and  
International Affairs Division  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) reply to the General Accounting Office (GAO) Draft Report entitled: "Implementation of the Uniformed Services Former Spouses' Protection Act," dated July 23, 1984 (GAO Code No. 967118), OSD Case No. 6565.

DoD concurs in all findings. Detailed comments on the GAO findings are enclosed. The detailed comments include a description of DoD actions taken since the completion of the GAO audit work. DoD discussed the detailed comments with your staff on August 9, 1984. At that meeting, a DoD markup of the draft report was reviewed and provided.

The Uniformed Services Former Spouses' Protection Act (Public Law 97-252, Title X) has proven a complex and challenging implementation project. The DoD implementation of the Act attempted to emphasize fairness, impartiality, consistency and timeliness in dealings with those persons affected. It is satisfying that GAO recognizes the issues and gives credit for the DoD accomplishments in response to this most difficult implementation.

Thank you for this opportunity to comment on the draft report.

Sincerely,

Robert W. Helm  
Assistant Secretary of Defense  
(Comptroller)

Enclosure

GAO note: DOD's written comments were received by GAO after final processing of the report had begun and are, therefore, not referred to in the report text. However, these written comments reflect the oral comments received on August 9, 1984, which were considered in preparing the final report.

DoD Comments On  
GAO DRAFT REPORT - DATED JULY 23, 1984  
(GAO CODE NO. 967118) - OSD CASE NO. 6565

"IMPLEMENTATION OF THE UNIFORMED SERVICES  
FORMER SPOUSES' PROTECTION ACT"

- o FINDING A: DoD Has Generally Done A Good Job Implementing Uniformed Services Former Spouses' Protection Act (Public Law 97-252, Title X). GAO found that the Services generally have done a good job implementing the Uniformed Services Former Spouses' Protection Act. But, as could be expected with any new legislative programs as complex as this one, that while DoD has attempted to achieve consistent and equitable implementation, actions by the Services indicate they were not, and in some cases still are not, in complete agreement about how to interpret certain of the Act's provisions and court order wording. (p. 1, GAO Draft Report)

COMMENTS: Concur. Given the complexity of the Uniformed Services Former Spouses' Protection Act (Public Law 97-252, Title X), DoD is pleased with the GAO evaluation of the implementation of this statute. Our efforts have attempted to achieve consistent, impartial, and fair treatment of those persons affected by the Act. The development of comprehensive policy guidelines becomes an evolutionary process. Time is needed to adjust to unforeseeable circumstances and to evaluate the myriad of possible interpretations that evolve from all legislation. In this task, DoD was assisted by public comments, legislators, former spouses of military retirees, and retired members.

The range of interpretation differences is small and confined to highly technical issues. There have been ongoing actions to minimize the significance of interpretational differences. DoD has held several reviews of Service procedures under the Act. Some actions are discussed in our comments to the remaining findings.

- o FINDING B: Implementation Of Direct Payment Provisions-- Applications For Direct Payment. GAO found that at the time of its field work, the Services did not have accurate statistical data on the total number of former spouse direct payment applications received or rejected. GAO found, however, that as of June 30, 1983, 644 direct payment applications remained unapproved. GAO further found that a test sample of the unapproved applications showed that the most common reasons for rejection were (1) the court order did not state that the amount should be paid from retired pay, (2) there was inadequate evidence that the court order was final, (3) the court order did not award any payments to



the former spouse, and (4) the court order was not served by certified mail. GAO concluded that the Services routinely approved most former spouse direct-payment applications that met the criteria specified in the Act. (p. 3; pp. 9-11, Appendix II, GAO Draft Report)

COMMENTS: Concur. The Services were left to develop their own data collection standards. As a result, data elements may have multiple definitions, as in the case of the Army example on page 10 of Appendix II. The need for a given piece of information must be balanced by the value of the information in the management decision process, in the context of competing needs, limited financial resources and personnel staffing. The program is managed at the Service level. It is important to note that a high percentage of former spouse applications are approved. Of those not approved upon initial application, the causal factor appears attributable to an older court order that does not conform with the provisions of the Act. In most instances, the reason for disapproval can be corrected.

- o FINDING C: Direct Payment Review and Approval Procedures Inconsistent. GAO found that DoD fully intended that the direct payment provisions of the Act be implemented in as consistent a manner as possible among the four Military Services and undertook several initiatives just prior to and following the effective date of the Act; however, some differences occurred. GAO reported that even though the implementation procedures had been revised to make them more consistent throughout the Military, the Services had not reexamined the previously rejected court orders to determine their applicability under the revised procedures. Several rejected court orders were identified as acceptable under current procedures. GAO further found that at the time of its followup visit, many of the inconsistent procedures and interpretations discussed (pp. 14-16) had been resolved; however, several differences remain as follows:
  - (1) If a court order used a narrative formula for dividing retired pay, the Navy and Marine Corps would not honor the order because the type of service for retirement purposes was not specified--while the Army and Air Force honored such court orders;
  - (2) Court order language was interpreted differently among the Services;
  - (3) The Services treated orders differently if they were issued in States where the laws--statutory or case law--neither specifically authorized nor prohibited courts from dividing retired pay in divorce cases;
  - (4) The Navy treated some court orders differently from the

other Services if they had become final before June 26, 1981, but were subsequently modified;

- (5) The Services differed in the scope of their review of the former spouse's application where she applied for only one type of payment, although the court order may have awarded more than one type of payment; and
- (6) The Army and the Marine Corps instructions for the direct payment application contained documentation requirements that were inconsistent with the other Services and were inconsistently followed within the Service.

GAO concluded that since the Services were using slightly different procedures for processing direct payment applications and applying slightly different criteria for interpreting some provisions of the Act and court orders, former spouses and retired members were sometimes treated differently, depending upon the Service from which the member retired. GAO further concluded that these inconsistencies could be dealt with administratively or as part of the final implementing regulations. (p. 4, and pp. 12-21, Appendix II, GAO Draft Report)

COMMENTS: Concur. The slightly different procedures for processing direct payment applications noted by GAO may have been prevalent in the early stages of implementation. Since GAO brought the differences to DoD's attention, DoD has completed two detailed reviews to eliminate inconsistent administrative procedures. The last review was in May 1984. The final DoD regulations should clean up any remaining issues. DoD expects to issue final regulations by September 1984. Procedural differences are caused by the complexity of the subject matter and the disparate language in court orders due in large part to the diversity of local laws. Within less than two years, the Services have developed an expertise in local law and have participated in a rigorous program of information exchange, resulting in greater uniformity of administrative procedures. DoD intends to continue its efforts to maintain uniformity and eliminate inconsistencies.

- o FINDING D: Timely Processing of Direct Payment Applications. The Act requires that, in cases where the member is already entitled to receive retired pay on the date the court order is effectively served on the Military Service, payment to the former spouse must begin within 90 days. GAO found, however, that all the Services occasionally missed the 90-day time limit for beginning payments. GAO further found that the delays ranged from a few days to over 3 months and generally the case file contained no explanation for the time limits being exceeded. GAO concluded that, because of the small number of cases involved and the newness of the Act, timely processing was not considered a significant problem in any of the Services. (p. 21-22, Appendix II, GAO Draft Report)

COMMENTS: Concur. The initial volume of applications contributed to some unfortunate delays in processing time. In most situations, the applications for payment to former spouses of retired members are approved for payment within 60 days of receipt.

- o FINDING E: Adequacy of Rejection Notifications. Although each Service has established procedures for notifying former spouses whether the court order submitted is acceptable, GAO found that only Navy's rejection notification completely and fully explained why the court order was not honored. GAO noted several types of problems with the notification which include the following:
- (1) The Army notified a former spouse that an application for direct payment was unacceptable because there was no evidence that the court order was final, but failed to point out other deficiencies in the application; and,
  - (2) The Marine Corps rejection notifications were confusing and did not explain why direct payment applications were denied or what remedial action could be taken to correct the deficiency.

GAO noted that, at the time of the followup visit, the Marine Corps had developed, or was in the process of developing, specifically tailored language for some situations. GAO concluded that each rejection notification should completely and fully explain why the court order was not honored. (pp. 22-25, Appendix II, GAO Draft Report)

COMMENTS: Concur. DoD agrees with GAO that each applicant is entitled to a full, clear explanation of why payments cannot be made under the provisions of the Act. In response to this issue, DoD held a writing clinic for Service personnel who process applications in March 1984. The Service representatives were encouraged to respond in plain, descriptive English while avoiding technical, legalistic phraseology. The Services agree to review applications in their entirety and to inform the applicant of all correctable deficiencies at once. However, in the event an application contains an uncorrectable deficiency that prohibits direct payment, DoD considers it sufficient to reject the application on that basis without additional review.

- o FINDING F: Tax Withholding Provisions: Possible Effect Of Subsection (C). GAO reported that Subsection (C) (10 U.S.C. 1408(a)(4)) states that in computing disposable retired pay, the Services must deduct amounts properly withheld for federal, state, and local income taxes to the extent that such amounts are "not greater than would be authorized if such member claimed all dependents to which he was entitled."

GAO found that this provision could increase the amount received by the former spouse and the member if the member increased his or her dependents -- by marriage or birth of a child. GAO further found another possible effect of Subsection (C) is that if the member understates his or her dependents and, thus, has a larger amount than necessary withheld, the former spouse would receive less than she or he should. GAO also found that only the Air Force had procedures which attempted to ensure that the member claimed all dependents to which he or she was entitled. GAO concluded that Subsection (C) could increase the former spouse's amount of retired pay if the retired member takes on additional dependents. However, the question is whether the Congress contemplated that the former spouse should, in effect, receive a "windfall" if the member's tax liability decreases for reasons such as remarriage. (pp. 27-30, Appendix III, GAO Draft Report)

**COMMENTS:** Concur. GAO describes accurately the computation process related to deduction of tax withholding under 10 U.S.C. 1408(a)(4). This is a matter for consideration by the Congress. DoD has no further comments or recommendations on this issue.

- o **FINDING G: Tax Withholding Provisions: Possible Effect Of Subsection (D);** GAO found that a possible effect of Subsection (D) (10 U.S.C. 1048(a)(4)) is that the former spouse's payment can be reduced if the member has outside income which places him or her in a higher tax bracket. Subsection (D) states that in computing disposable retired pay, the member can increase the amount of withholdings deducted if he or she "presents evidence of a tax obligation which supports such withholding." GAO further found that to the extent that a retiree's tax rate, based on his or her entire income exceeds the tax rate that would apply to retired pay without any other income, Subsection (D) will still permit the retirees to reduce "disposable" retired pay and, thus, the amount the former spouse will receive. GAO also found that the Services were requiring that retirees submit some form of proof before they would subtract the extra withholdings in computing "disposable" retired pay. (GAO noted that this is not required by the Act nor by DoD's proposed regulations.) GAO concluded that the question is whether the Congress contemplated that the amount of retired pay received by the former spouse should be reduced because the member has other income which puts him or her in a higher tax bracket. (pp. 30-33, Appendix III, GAO Draft Report)

**COMMENTS:** Concur. DoD shall apply the guidance expressed in Comptroller General Decision B-213895 of April 25, 1984. In that decision, the Services' authority to deny a military retiree's request for unsupported supplemental tax withholding was affirmed.

- o FINDING H: Effect Of Internal Revenue Service Requirement To Withhold Only From Retiree. GAO reported that the Internal Revenue Service requires income tax withholdings be based on the member's gross retired pay and that it be totally withheld from the member. GAO found that this increased the amount of the member's withholdings, which in turn reduces "disposable" retired pay. GAO further found that the member will receive a tax refund on the excess amount withheld when his or her tax return is filed. But, the former spouse will have to pay taxes on his or her portion of the retired pay. The net effect will be that the after-tax amount will increase for the member and decrease for the former spouse. GAO concluded that if a court divided retired pay equally between the member and the former spouse, the after-tax result would give the member more than a 50 percent share of the net amount available and the former spouse less than a 50 percent share. (p. 7, and pp. 33-34, Appendix III, GAO Draft Report)

COMMENTS: None.

- o FINDING I: Services' Procedures For Approving ID Cards Vary. GAO found that the Services' procedures for approving and issuing former spouse ID cards varied, as follows:

- (1) The Services assigned the responsibility for reviewing and approving former-spouse ID-card applications to different organizational levels;
- (2) All Services used the same type of documentation to establish ID-card eligibility, but the requirements differed concerning the strength of documentation to be provided and who should supply it; and
- (3) Not all the Services issued temporary ID-cards to former spouses.

GAO concluded that as a result of these differences, some eligible former spouses waited longer to receive benefits, and expended more effort and, in some cases, more money to submit an acceptable application simply because of the specific Military Service involved. (pp. 36-41, Appendix IV, GAO Draft Report)

COMMENTS: Concur. DoD issued DoD Instruction 1000.13, "Identification Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals," on June 6, 1984, to overcome some of the concerns noted by GAO. The Office of the Assistant Secretary of Defense (Manpower, Installations and Logistics) is working with the Services on ID-card issuance procedures.

- o FINDING J: Providing Medical Care To Former Spouses Not Meeting Normal Eligibility Criteria. To deal with hardship cases where all other criteria were met except that the divorce became final before February 1, 1983, the Conference Report which accompanied the Act "strongly" encouraged the Service Secretaries to authorize the use of military medical facilities by "deserving" former spouses (Secretary-designee status). GAO found that the Secretary-designee status may not be accomplishing what the conferees had hoped for, as it generally only allows the designated individual to receive treatment for a specific disease or condition at a specific military health facility. GAO further found that each Service not only applies different criteria for determining whether a former spouse should be granted Secretary-designee status, but also differs in the type of medical care provided once such status has been granted. GAO concluded that it may be perceived that less is at stake with regard to authorizing medical, commissary, and exchange benefits than in approving or disapproving direct payments. To promote equitable treatment, there should be a more uniform process among the Services. (pp. 10, pp.41-44, Appendix IV, GAO Draft Report)

COMMENTS: Concur. The Office of the Assistant Secretary of Defense (Health Affairs) is evaluating how to provide greater uniformity of medical services for former spouses who do not qualify for medical care as described in the Conference Report. Legislation is pending in the Congress that would expand medical coverage under the Act and would reduce the number of former spouses seeking "designee" status.

#### RECOMMENDATIONS

None.

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